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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

SPECIFIC GROUPS AND INDIVIDUALS: MASS EXODUSES AND DISPLACED PERSONS

Profiles in Displacement: East Timor

Report of the Representative of the Secretary-General on internally displaced persons, Mr. Francis M. Deng, to the Commission on Human Rights in accordance with Commission resolution 1999/S-4/1 of 27 September 1999

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I. INTRODUCTION

1. The present report is submitted pursuant to resolution S-4/1 adopted by the Commission on Human Rights on 27 September 1999 at its special session on the situation of human rights in East Timor, held from 24 to 27 September 1999. The special session was convened in response to reports of widespread violence and serious human rights violations in East Timor following the popular consultation on the future status of East Timor, held on 30 August 1999.

2. In that resolution, the Commission condemned the widespread, systematic and gross violations of human rights and international humanitarian law in East Timor, including widespread violations and abuses of the right to life, personal security, physical integrity and the right to property, and the activities of the militia in terrorizing the population. The Commission expressed its deep concern at the widespread forced removal and dislocation of persons to West Timor and other nearby areas, and the serious humanitarian situation of the displaced East Timorese, who had been deprived of food and access to basic health services, particularly as it affected children and other vulnerable groups. It also expressed deep concern at the violence and intimidation directed against international agencies as well as most of the independent media. The Commission further expressed deep concern at the lack of effective measures to deter or prevent militia violence and the reported collusion between the militias and members of the Indonesian armed forces and police in East Timor.

3. The Commission affirmed that all persons who committed or authorized violations of human rights or international humanitarian law were individually responsible and accountable for those violations and that the international community would exert every effort to ensure that those responsible were brought to justice. The Commission further affirmed that the primary responsibility for bringing perpetrators to justice rested with the national authorities. In that connection, it called upon the Government of Indonesia to ensure, in cooperation with the Indonesian National Commission on Human Rights, that the persons responsible for acts of violence and flagrant and systematic violations of human rights were brought to justice and to ensure that human rights and humanitarian law were fully respected in regard to all persons within its own jurisdiction or under its control. The Commission also called upon the Secretary-General to establish an international commission of inquiry in order to gather and compile systematically information on possible violations of human rights and acts which might constitute breaches of international humanitarian law committed in East Timor since January 1999. The report of the Commission of Inquiry is before the Commission at its present session (A/54/726-S/2000/59).

4. Specifically regarding the displacement crisis, the Commission called upon the Government of Indonesia to guarantee the voluntary return of all refugees and displaced persons, including those who had been forcibly displaced to camps in West Timor, to ensure immediate access by humanitarian agencies to displaced persons, both in East Timor as well as West Timor and other parts of the Indonesian territory, to guarantee the security and free movement of international personnel and to continue to allow the deployment of emergency humanitarian assistance.

5. The Commission called upon the Government of Indonesia to cooperate fully with the United Nations High Commissioner for Human Rights and with the special procedures of the

Commission. In this connection, the Commission requested the Representative of the Secretary-General on internally displaced persons as well as the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the question of torture, the Special Rapporteur on violence against women, its causes and consequences, and the Working Group on Enforced or Involuntary Disappearances to carry out missions to East Timor and to report on their findings to the Commission at its fifty-sixth session and, on an interim basis, to the General Assembly at its fifty-fourth session. The report of the joint mission of the three above-mentioned Special Rapporteurs, in which the Representative was unable to participate for scheduling reasons, is before the Commission at its present session (A/54/660).

6. The Representative of the Secretary-General on internally displaced persons undertook a mission to East Timor from 26 February to 1 March 2000 to focus on the displacement aspects of the crisis, in particular the displacement that occurred in the lead up to and following the popular consultation by the people of East Timor. In so doing, the Representative examined issues of protection and assistance in all phases of displacement - protection from arbitrary displacement, protection and assistance during displacement, and during return or resettlement and reintegration. Though the height of the displacement crisis had passed at the time of the Representative's mission, there nonetheless remained a need to understand the circumstances under which displacement had occurred, as well as to address its consequences and concerns connected with the current situation, in particular relating to the processes of return and reintegration.

7. In exploring these issues, the Representative used, as the Commission has requested, the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2) as a basis for his dialogue with the authorities and with intergovernmental and non-governmental organizations. Copies of the Guiding Principles, in English and Portuguese, were distributed to the Representative's various interlocutors. The United Nations Transitional Administration for East Timor (UNTAET) human rights unit suggested having the Guiding Principles translated into Tetun and undertook to do so provided that it received the necessary resources, which the Representative has agreed to make available.

8. The Representative met with representatives of the East Timorese leadership, specifically the Vice President of the National Council of Timorese Resistance (CNRT), Jose Ramos Horta, the Special Representative of the Secretary-General for East Timor, Sergio Vieira de Mello, numerous other officials of UNTAET in the human rights, humanitarian, peacekeeping and political spheres, representatives of individual United Nations and other international organizations working with the displaced, local non-governmental organizations and Church leaders. The programme of the visit also included field visits to Aileu and to Batugade, from where the Representative travelled to Motaain, West Timor at the invitation of the local leadership of the Indonesian Army (TNI) and with the assistance of the United Nations Military Observers (UNMOs), to whom the Representative is very grateful. The Representative regrets that his request for authorization from the Government of Indonesia to visit camps of displaced persons in West Timor and to engage in dialogue with the authorities on conditions therein was denied in advance of the mission. The Representative would like to express his appreciation to all those who took the time to meet with him and share their views on the situation. His

delegation is particularly grateful to the office of the Special Representative of the Secretary-General for East Timor for organizing the programme of the visit and to the International Organization for Migration (IOM) for facilitating his field visits.

9. The findings of the mission are set out in the present report, which is divided into five sections. The introductory section is followed, in section II, by an overview of the displacement crisis. Sections III and IV respectively address issues of protection and assistance during displacement, and during return or resettlement and reintegration. By way of conclusion, specific recommendations for supporting durable solutions to the displacement crisis are set out in section V.

10. Finally, because of limitations of space and specific restrictions on length, this report focuses strictly on the findings of the mission. For an overview of the history of East Timor and of the human rights violations and the violence that have characterized it, reference should be made to other sources, including the other reports on the situation that are at present before the Commission.

II. THE DISPLACEMENT CRISIS

11. In East Timor, displacement is not a recent phenomenon. Flight, especially hiding in the hills, has been a long-standing coping mechanism of the East Timorese given the political tensions and serious violations of human rights that have characterized the Territory's history since its annexation by Indonesia in 1975. During that period, the Representative was informed, a large number of people also were forced by the Indonesian authorities to move from their traditional homes in the mountains into urban areas. This report, however, focuses on the heightened displacement crisis associated with the popular consultation on the Indonesian Government's offer of autonomy for East Timor within Indonesia, held on 30 August 1999. Mass displacement, it is important to underline, did not begin only after the results of the popular consultation were announced but also occurred in the months leading up to the ballot.

A. Prior to the popular consultation

12. As early as February 1999, following the Government's proposal in January for either greater autonomy or independence for East Timor, a campaign of intimidation and violence launched by pro-integrationist militia against persons and communities considered to support independence began to generate significant internal displacement. An estimated 60,000 persons became internally displaced, fleeing mostly from isolated villages to district towns and, often, onwards to the capital Dili. Initially, those fleeing tended to be taken into the homes of relatives and friends. As their numbers increased, churches became principal centres of refuge.

13. Protection problems, however, often followed the displaced into their places of refuge. A particularly brutal incident occurred at the church in the town of Liquica, where several hundred internally displaced persons were sheltered. According to an eyewitness account cited by the United Nations Commission of Inquiry, on 6 April "militia and Indonesian army personnel went on a shooting spree at the church. The Representative was able to learn at the time of his visit that as many as 58 bodies had been identified thus far. "In the Liquica church

killings and in other cases of intimidation", the Commission of Inquiry had found that "no action seems to have been taken to arrest the perpetrators or end the intimidation" (A/54/726-S/2000/59, paras. 41-42).

14. Moreover, the separation of families that occurred eroded what protection the family structure could provide. Initially, men fled into the hills while women and children remained behind, only later to flee or be forcibly relocated. In the absence of the men in the household, women and girls became extremely vulnerable to sexual violence inflicted as part of the campaign of intimidation waged by pro-integrationist forces in the months leading up to the ballot. The Special Rapporteur on violence against women, who has received allegations of a number of such cases, has noted that intimidation during the period from January to July 1999 was particularly directed against female family members whose husbands had left the village (A/54/660, para. 52).

15. Regarding the apparent aim of the intimidation, the Representative received reports of internally displaced persons being forcibly grouped together by militia for the purpose of indoctrinating them to vote pro-autonomy, with this occurring five to six weeks before campaigning was officially allowed to begin. And yet, the very fact of being displaced presented obstacles to the exercise of the right to participate in the popular consultation. The process of voter registration required the presentation of two forms of personal identification – documents that for many of the internally displaced had been destroyed or lost in the course of displacement. In an important initiative to overcome this problem, the United Nations Mission in East Timor (UNAMET), which was charged with overseeing the popular consultation, introduced a system whereby an affidavit from the village chief, priest, or other community leader from either the area of origin or the area to which the person concerned had been displaced was sufficient to enable internally displaced persons to register to vote.

16. Notwithstanding the intimidation and violence characterizing the period leading up to the vote, the high voter turn-out - 98 per cent of the registered electorate - indicates that they did not keep people from voting, or from voting to reject the Government's offer of autonomy, as did 78 per cent of the voters. Indeed, the Representative was informed that one of the highest voter turn-outs was by a community of internally displaced persons, all of whom (save two persons, of whom one was giving birth) courageously participated in the vote despite the severe intimidation and risks to their personal security. In another indication of the importance that the population attached to their participation in the popular consultation, it was reported that a number of people reportedly voted and then immediately fled into the hills.

B. Following the announcement of the results of the ballot

17. In the days and weeks following the announcement on 4 September of the results of the ballot, the displacement crisis escalated dramatically, affecting an estimated 80 per cent of the population of East Timor. Displacement occurred in two major patterns: some 500,000 persons fled within East Timor, mostly going into hiding in the hills and usually only a few kilometres from their homes, while an estimated 240,000 fled or, as is reported to have been most often the case, were forcibly relocated, principally to West Timor but also to other parts of Indonesia. Displacement also occurred to other countries: some 1,500 persons were assisted by the international community in being evacuated to Australia.

18. Also in this period of displacement, the separation of families was not uncommon nor was the related problem of sexual violence against women and girls. The Special Rapporteur on violence against women has received allegations of a number of such cases during this period as well. Moreover, the UNTAET human rights unit expressed concern about the fate of several hundred children allegedly taken from East Timor, ostensibly for their protection, to orphanages in Java, even though many of them are believed not to be orphans. In the absence of access by the international community or local NGOs to these orphanages, it has not been possible to verify this information.

19. As has been well documented in other reports, the general context in which displacement occurred after the announcement of the results of the ballot was characterized by systematic and widespread violations of human rights, violence and mass destruction unleashed by pro-integration militias with the collusion of elements of the Indonesian security forces. Many people spontaneously took flight both within and outside of East Timor, in an effort to escape these conditions of severe physical insecurity. However, displacement was also systematic, such that large numbers of persons did not flee but were forcibly relocated, that is, deliberately moved against their will. In several cases, people reportedly were ordered from their homes and, often at gunpoint, herded onto trucks, ships and planes, destined principally for West Timor but also for other parts of Indonesia. From the point of view of logistics alone, the operation appears to have been highly organized, with advance planning having been required. Indeed, the Representative was informed of documentary evidence indicating preparations on the part of the military, in cooperation with the police, in advance of the announcement of the results of the popular consultation, for the mass removal of some 250,000 persons from East Timor to West Timor. The displacement and evacuation of people, along with the intimidation, terror and destruction of property that occurred, the Commission of Inquiry has concluded, "would not have been possible without the active involvement of the Indonesian army, and the knowledge and approval of the top military command" (A/54/726-S/2000/59, para. 138).

20. On this last issue of intentional displacement, it is essential to note that under international law displacement is not prohibited in absolute terms. However, in order for displacement to be permissible, a number of guarantees must be met, which are spelled out in the Guiding Principles. Principle 6 affirms the right to be protected against arbitrary displacement inter alia when displacement is used as a collective punishment as well as in situations of armed conflict unless the security of civilians or imperative military reasons so demand. Principle 7 stipulates that prior to any decision requiring displacement, the authorities shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures are to be taken to minimize displacement and its adverse effects, including by ensuring, to the greatest practicable extent, that proper accommodation is provided, that displacement is effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated. Displacement shall not be carried out, Principle 8 affirms, in a manner that violates the rights to life, dignity, liberty and security of those affected. From all accounts of the forcible relocation of East Timorese in September, these guarantees clearly were not met and, consequently, the measures of forced relocation were carried out in clear contravention of international law. Forcible transfers of population, it must further be noted, constitute a crime against humanity, as recognized in the Statute of the International Criminal Court.

21 Regardless of whether one considers the general campaign of violence that led people to flee or its specific element of forcible relocation, the question arises as to what motivated the mass destruction and displacement Understanding the motivations for permitting, if not also inducing, the displacement crisis to occur is critical not only for establishing accountability for what happened back in September 1999, but also for resolving the problems of the displaced that persist today After hearing a number of possible explanations, it became clear that a multiplicity of motivations must have been at work

22 To a certain extent, the wave of violence and destruction unleashed after the announcement of the outcome of the popular consultation was a reaction of rage and revenge on the part of pro-integrationist forces to the results of the ballot, which clearly were not in their favour These feelings were undoubtedly magnified by what, it was suggested, must have been a sense of shock and disbelief at the overwhelming size of the pro-independence majority Acts of spite appeared to be intended to ensure that independence for East Timor would come at a heavy price, including in terms of denying East Timor the benefits of the infrastructure and other material investment that had been made over the years, thereby undermining its successful development as an independent nation It was also a widely held view that the actions of the pro-integrationist forces in East Timor were intended to serve as a foreboding message to secessionist movements elsewhere in the Indonesian archipelago While East Timor may be considered an exceptional case given its history, it is believed that the Indonesian military nonetheless were, through their actions there, giving a warning signal to insurgent movements in a number of places in Indonesia, most notably in Aceh

23 Regarding both flight and the measures of forced relocation to West Timor and elsewhere in Indonesia, a number of overridingly political factors appear to have been at play The sudden mass movement of large numbers of people from East Timor, including both pro-integrationists who fled for fear of their own security and persons supporting independence who were forcibly relocated, appears to have been aimed at discrediting the process of popular consultation by signalling that a sizeable portion of the population disagreed with the results and thereby calling into question the legitimacy of the outcome If the hope was that the ballot accordingly would be redone, it was suggested that it was likely believed that the electorate would by that point have been so terrorized as to ensure a radically different result It was also suggested that the mass displacement would assist in fostering the impression that East Timor was on the verge of civil war and descent into chaos against which Indonesia could act as a stabilizing influence The most widely held view was that the mass forced relocation was undertaken in order to ensure for pro-integrationist forces a constituency or power base in West Timor and even a potential "bargaining chip" in future negotiations This last reason would appear to best explain why, as will be explored below, displaced persons in West Timor continue to be impeded from returning even months after the Government of Indonesia accepted the results of the ballot

C Issues of terminology

24 Another important aspect of the displacement crisis concerned the considerable confusion that arose regarding the appropriate terminology by which to describe the populations affected Specifically, the question arose as to whether persons displaced outside of East Timor were refugees (who, by definition, have crossed an international border) or internally displaced persons The question is not simply one of semantics, as the answer carries important

implications for the international response. While there exists an established system of protection and assistance for refugees, providing protection and assistance to internally displaced persons is first and foremost the responsibility of the Government concerned, failing which there is as yet no predictable and comprehensive international response.

25. At the crux of the matter was the status of East Timor vis-à-vis Indonesia. In the light of the fact that the United Nations had never recognized Indonesia's formal annexation of East Timor,[1] the answer should have been straightforward: while those displaced within East Timor were internally displaced persons, those who fled or were forcibly relocated to West Timor and other parts of Indonesia were refugees. However, the nomenclature varied depending upon political perspective regarding the nature of the border between East and West Timor. The Government of Indonesia reportedly initially claimed that the persons displaced from East Timor to West Timor also were internally displaced persons, at least until its decision in November 1999 to rescind its formal annexation of East Timor. Indeed, political sensitivities appear to have precluded the international community's taking a public position on the matter until that time: the consensus in the initial months of the crisis was to avoid classification of the uprooted as either "refugees" or "internally displaced persons" and instead to rally around the catch-all, and legally imprecise, term "displaced persons". The issue of terminology has since been satisfactorily resolved, with the Office of the United Nations High Commissioner for Refugees (UNHCR) and refugee experts subsequently advocating use of the term "refugee" to describe the displaced in West Timor.[2] Even so, it was apparent throughout the mission that confusion as to terminology persisted among international humanitarian, political and military personnel, many of whom regularly referred to the East Timorese refugees in West Timor as "IDPs" (internally displaced persons). However, the term most commonly in use at present is "returnees", by which is meant returning refugees as well as returning internally displaced persons.

26. Such questions of terminology in describing a displacement crisis, while of critical importance in terms of international legal obligations and institutional response, nonetheless must not be overstated. Approaches to providing protection and assistance to victims of displacement inevitably will differ, as the following section underscores, depending on whether the affected populations have crossed a border or not, but international concern must not discriminate among different categories of the displaced in terms of their need for international protection and assistance. Indeed, perceived discrepancies in the international response to the plight of refugees from East Timor compared with the internally displaced have, as explained below, created tension among the two groups of displaced persons upon their return.

III. PROTECTION AND ASSISTANCE DURING DISPLACEMENT

A. Conditions of the internally displaced

27. In the case of internally displaced persons in East Timor, in the period leading up to the popular consultation, efforts on the part of international and local personnel to provide the displaced with humanitarian assistance were thwarted by political obstacles and related security concerns. Then, in the wave of violence that followed the announcement of the result, virtually all international personnel were evacuated from the island of Timor. Meanwhile, the fact that the exact whereabouts of several hundred thousand internally displaced persons who had gone into

hiding in the hills was unknown - and this for over a month after the campaign of violence was unleashed - made it near impossible to distribute assistance by air with any assurance that it would reach those in need. Even less was known about their protection needs. Numerous cases of sexual violence against internally displaced women, both prior to the ballot and after the announcement of its results, have since been compiled by local non-governmental organizations.

B. Conditions of refugees in West Timor

28. Though, as noted above, the Representative was not permitted to visit refugee camps in West Timor, international and local sources in East Timor, whose own first-hand assessment of conditions in the camps is also often limited by problems of access, readily provided information they had secured on the conditions therein. Of particular concern is the fact that the problems of physical security and access, with which the Commission was seized at the height of the crisis in September, continue to persist today.

29. It was widely reported that in the majority of the more than 200 camps and encampments in the Atambua district, where most of the refugees in West Timor are located, militias continue to operate with a free hand, without concerted efforts on the part of the authorities to rein them in. United Nations Military Observers (UNMOs), who are among the few international parties allowed considerable movement throughout West Timor, attest that militia activity continues unabated in the camps. Indeed, it is reported to have increased since January 2000.

30. Protection problems in the camps are reported to include harassment, intimidation, beatings, disappearances, rape and sexual slavery. Precise details as well as testimonies of individual cases, however, are difficult to obtain as access to the camps by outside observers is severely limited. On occasions when access is granted, it is still very difficult, if not impossible, for international personnel to speak with refugees freely and without putting them at greater risk.

31. UNHCR stressed the lack of access to many of the camps and encampments of refugees in West Timor as a persistent problem greatly hindering the repatriation process to East Timor. Any systematic registration of refugees has proved impossible. This, in turn, makes it very difficult to address the protection problems of refugees. Those individuals who approach UNHCR on their own put themselves at grave risk by doing so. While some have managed to return, there have been incidents of persons who had expressed a desire to return being dragged off trucks by pro-Indonesian militias while attempting to leave the camps. UNHCR and IOM staff alike informed the Representative that personnel of international agencies are often chased out of the camps or encampments by militia and thereby prevented from carrying out their work. It should be recalled that the Commission, in its resolution of 27 September 1999, called upon the Government of Indonesia to ensure immediate access by humanitarian agencies to displaced persons and to guarantee the security and free movement of international personnel.

32. The Representative was informed that the problem of militia control of the camps has repeatedly been raised by UNTAET with the Indonesian authorities at the highest level, including with President Wahid during his visit to Dili during the Representative's mission, on 29 February. Efforts were also being made to address the problem by way of the dialogue initiated between the Armed Forces of National Liberation of East Timor (FALINTIL), the military wing of the National Council of Timorese Resistance (CNRT) and militia leaders, held

in Singapore over the weekend of 26 and 27 February 2000. UNTAET has also made approaches to moderate and less moderate militia leaders, hoping to have them come to East Timor to speak with local leaders and communities. Plans are under way to have several of the militia leaders travel to East Timor shortly. By providing such opportunities for dialogue, it is hoped that the militia will "release" those East Timorese who wish to leave the camps and encampments in West Timor to return to their homes.

IV. RETURN OR RESETTLEMENT AND REINTEGRATION

33. As noted above, in the resolution adopted at its special session, the Commission called upon the Government of Indonesia to guarantee the voluntary return of all refugees and displaced persons, including those who have been forcibly displaced to camps in West Timor. Since that time, the pace of return has varied according to the patterns of flight.

A. Return of internally displaced persons

34. Following the deployment of the International Force, East Timor (INTERFET) in late September 1999 and the gradual restoration of security within East Timor, those persons who had fled into the hills began to return. With no apparent authority preventing their return, this movement took place quickly, spontaneously and with relative ease.

B. Repatriation from West Timor

35. By contrast, repatriation of refugees from Indonesia and especially from the camps and encampments in West Timor has been problematic and has proceeded at a slower pace. To be sure, there has been measurable progress on the issue of repatriation since the Commission's special session. A Memorandum of Understanding (MOU) outlining the procedural arrangements for repatriation was signed by the Government of Indonesia and UNHCR on 14 October 1999. Since that time, there has been significant repatriation to East Timor: at the time of the Representative's visit, some 143,000 persons had returned. However, an estimated 100,000 to 110,000 refugees still remained in camps and encampments in West Timor, many of them against their will. In recent weeks, the rate of return had decreased. Indeed, a slowing of the rate of return is believed to have been the intention motivating the intensification of militia activity, in an effort to maintain a core constituency of the power base that the population in the camps represents to the militia.

36. In an important recent development, the Government of Indonesia was reported to have announced that 31 March would be considered as the deadline by which time refugees would need to have made a decision on whether to return to East Timor or to be registered as Indonesian citizens and possibly resettled in other parts of Indonesia. The authorities also planned to discontinue the provision of humanitarian assistance to the refugees on that date. Of particular concern are the results of informal surveys conducted by international personnel indicating that many of the refugees were not aware of this deadline. In the light of the fact that many refugees are currently being prevented from returning, the international community has appealed that this cut-off date not be strictly enforced, in the interest of safeguarding the rights of refugees to make a free and informed choice. The Representative was therefore pleased to be informed by the TNI Captain in Motaain, West Timor, that it was not the policy of the

Government to require decisions about return to be made by 31 March. However, at the time that this report was being finalized, refugee and human rights advocates raised serious concerns that the 31 March deadline nonetheless would be enforced.

37. At this stage, it is already clear that a number of East Timorese currently in West Timor are expected to choose to remain in Indonesia rather than return to East Timor. Some 50,000 to 70,000 persons are expected to fall into this group, largely comprised of TNI soldiers, police and civil servants formerly stationed in East Timor, who fear reprisals if they return, as well as a discontinuation of benefits, especially pensions, from the Government of Indonesia. One idea put forward is for the Government of Indonesia to follow an earlier example set by Portugal and continue to pay such benefits to former civil servants despite its departure from the region. Moreover, it is believed that some civil servants are simply awaiting 31 March to return, until which time they can continue to optimize their collection of benefits, including salary, from the Government of Indonesia.

38. For the remainder of the East Timorese in West Timor, a major problem affecting the rate of return is the campaign of "misinformation" being waged in the camps by militias and pro-integrationist supporters, painting a discouragingly grim and threatening picture of conditions in East Timor. The negative propaganda has included unsubstantiated allegations of serious abuse by INTERFET, overly exaggerated accounts of harassment suffered by former militia who have returned, and reports of no food and means of survival. In an attempt to counter these misperceptions, UNHCR has launched a mass information campaign which confirms the well-being of returnees and attempts to provide an accurate picture of everyday life in East Timor. Information is disseminated by means of leaflets, radio broadcasts and video testimonials by returnees. The International Committee of the Red Cross (ICRC) service of transmitting messages among family members also serves to support the goal of communicating accurate information.

39. The programme of "family reunion visits" organized by UNHCR and IOM with the support of the UNTAET Peacekeeping Force, UNMOs and the United Nations Civilian Police (CIVPOL) and with the cooperation of the TNI has proved to be a particularly important means of communicating accurate information and promoting return. The visits, which bring refugees in West Timor together with relatives in East Timor for a few hours at a site at the border crossing of Batugade (which was visited by the Representative), present a unique opportunity for refugees to receive first-hand information about the situation from family members and friends before taking a definitive decision about return. Though security problems had led to the suspension of the visits at the time of the Representative's mission, reinforced security measures have since enabled the weekly visits to resume.

40. The return process itself commences with UNHCR and IOM attempting to gain access to refugees in West Timor in order to gauge their willingness to return. Owing to the presence of the militias, who oppose and often prevent returns, UNHCR and IOM have to act quickly upon identifying potential returnees, lest they are intimidated and coerced to stay. The day following registration of a desired return, the returnee is picked up by IOM at a designated time and taken, either by truck or ship, across the border to East Timor. There, UNTAET troops conduct a weapons search, doing so in a transparent and publicly visible manner in order to reassure the East Timorese population that all measures are being taken to ensure that armed elements do not

infiltrate East Timor as part of the return process. The Representative, as well as a number of East Timorese onlookers, observed one such security check of returnees at checkpoint Alpha near Batugade.

41. Upon entry into East Timor and after the security check, the first stop for returnee convoys is at a UNHCR transit station a few kilometres from the border where returnees receive a registration card, a package of food and non-food items of assistance and basic medical care. Doctors interviewed at the medical clinic reported that they see few cases of malnutrition among returnees, but that skin diseases and malaria are common. Returnees are then transported by convoy either to their final destination or, if the distance is more than a day's journey, to a transit centre, such as that in Dili which the Representative visited, from where onward travel to their home area is organized.

42. Increasingly, protection problems are confronting refugees upon their return. Indeed, it appears that the further advanced the repatriation process, the greater the risks faced by returnees. Changing perceptions of the profile of the returnee population help to explain this trend. It is generally assumed that the first to return from West Timor and other parts of Indonesia were innocent civilians who were forcibly relocated or fled out of genuine fear and whose return went smoothly. There is suspicion that the reluctance resulting in the delayed return of others stems from their involvement in activities for which they have reason to fear retribution. Included in this group are not only hard-core militia, most of whom are assumed to be unlikely to risk return, but also the large numbers of conscript militia, who may wish to return but are uncertain as to how they will be received. The international community considers that the challenge now is to support the return of "moderates" among the pro-integration forces, albeit, as a senior UNTAET official noted, "moderates ... who may have blood on their hands". Notably, the CNRT has stated that it is prepared to accept such persons back in East Timor. Yet, while this is the expressed view of the CNRT leadership, it is not always reflected at the local level.

43. Events in recent months indicate that returnees with actual or suspected affiliation with the militia risk intimidation, beatings and stonings. Incidents of rape of women returnees who have themselves, or are related to persons with, actual or alleged affiliation with the militia of the pro-integrationist movement were also reported. The UNTAET human rights unit had received reports of four cases of killings of returnees.

44. A particularly worrying aspect of such acts is that anti-militia sentiment increasingly is being manipulated to resolve vendettas or personal grievances, with the result that many innocent individuals have fallen victim to accusations of militia involvement and the wrath of "popular justice". Given this trend, it is all the more difficult for the international community to predict which returnees may be particularly vulnerable to attack because of actual or alleged links to the militia. Generally, the risk varies regionally, depending upon the intensity of militia activity in a particular area. For example, in the region of Aileu, which had not suffered too extensively at the hands of the militia, reprisals were not believed to be as harsh as in Liquica or Ermera, where militia activity had been particularly destructive.

45. To pave the way for the safe return of so-called "sensitive groups", efforts are undertaken by UNHCR in collaboration with UNTAET District Administrators, CIVPOL, UNMOs, the

local CNRT leadership, the Church and community leaders to inform the local community in advance and negotiate the return of such persons. Often, this involves the local community deciding to accept the return of individuals who committed lower-scale abuses, such as burning and looting, provided that they publicly admit their guilt and perform community service, for instance in reconstruction. Town-hall meetings provide one means of discussing these issues with the local population. UNHCR, UNTAET and the Church have set up "safe houses" where persons considered to be at particular risk can remain pending investigations of accusations against them and successful negotiations with the local community for their return. While the assumption is often that those who have returned or are returning have "less blood on their hands" as they are willing to risk facing their victims, at least one case of a returnee who was responsible for murder in the September violence has been reported. Remarkably, after intensive efforts by UNHCR, UNMO, CIVPOL and CNRT, the individual in question was allowed to return to his community. Yet, at times, the return of persons believed to have been involved in militia activity is strongly objected to by the local community: the Representative was told of one case where an individual's attempted return caused a near riot of 100 people vehemently opposed to it. Moreover, though individuals at risk may manage to return, the lack of a sustained international presence in outlying areas impedes close monitoring of security conditions, both for the individuals concerned and for the community as a whole, over the longer term.

46. It is reported that a number of returnees suspected of militia involvement have been taken into detention by CNRT, sometimes in direct cooperation with FALINTIL, for the purposes of "re-education". It is also reported that beatings have been suffered in detention. While CIVPOL has been able to take a number of persons being held by the CNRT out of detention for a few hours to interview them regarding the conditions of their detention, for lack of its own alternative facilities CIVPOL reported that it has no choice but to return the detainees. UNHCR informed the Representative of one case where returnee children were detained in isolation in a dark room for several days on account of their parents being suspected of militia activity. The CNRT has also been accused of using youth gangs to mete out popular justice.

47. Protection problems not directly related to the question of militia activity, but stemming rather from generalized resentment among returnee communities, have also arisen. Specifically, as many of the international and local persons with whom the Representative met attested, returnees from West Timor, other parts of Indonesia and other countries are viewed with considerable resentment by returnees among the internally displaced who had fled into the hills of East Timor. The latter group feels that, by comparison, they fared much worse in terms of access to international assistance while displaced and also upon return. Heightening these feelings of resentment is the fact that while the internally displaced returned home to find that they had lost everything in the wave of destruction and looting, those returning from outside East Timor typically bring with them visibly significant amounts of possessions and consumer goods. Suspicions abound that some of these possessions do not rightfully belong to the returning refugees but may have been looted from the homes of those who had fled into the hills. Indeed, international observers reported that while the militias were responsible for looting major items, the looting of goods of lesser value, including everything from chairs to cutlery, was often the work of opportunists among the local population. Though, as stated above, this problem is not directly related to that of militia activity, accusations of such activity is one way in which this resentment among returnee communities is expressed.

48. Also of concern regarding return are the views expressed by some individuals with whom the Representative met, including staff of local human rights NGOs, opposing the return of persons of Indonesian origin, even if they had lived in East Timor for over 20 years and their children had been born there. This opposition has already been openly manifest in the demonstrations by East Timorese against the recent return to Dili of a number of Muslims who, as a result, were compelled to seek refuge in a mosque. This reaction is in stark contrast to the stated position of the CNRT leadership that all those who had lived in East Timor are welcome to return and assume citizenship if they so desire (while no regulations have yet been established, it is presumed that a minimum requirement of five years' residency would be required to assume citizenship). On behalf of the international community, UNHCR has affirmed that all those persons wishing to avail themselves of the return process may do so.

C. General conditions of return

49. A common problem faced by returnees, whether they were displaced within or outside of East Timor, are the general conditions in East Timor to which they are returning. The devastation wreaked upon East Timor last year cannot be overemphasized. An estimated 70 per cent of its infrastructure has been destroyed, including homes, schools, medical clinics, places of business, financial institutions and banks. In the ensuing chaos of the destruction, looting, carried out not only by the militia but also by opportunists among the civilian population, was rampant. In this context, the rebuilding of communities in order to support durable solutions of return and reintegration, encompassing both protection and assistance, is an urgent and immense challenge, a number of elements of which are highlighted below.

50. Shelter and personal property. As a result of the widespread physical destruction, a large number of persons return to find themselves in conditions of severe deprivation on account of the damage and loss of their property sustained during the events of September 1999. Massive reconstruction is urgently required. At the same time, there is not always comfort for an owner in finding that his or her property has sustained little or no damage, as this only leads to suspicion that an affiliation to the militia explains why the property was spared destruction. Moreover, many of the houses that survived intact have become occupied by persons whose own homes have been destroyed, inevitably leading to problems when the rightful owners return. Local and international observers alike pinpointed the issue of compensation and restitution of property as one of the more critical problems currently needing to be addressed. Efforts to address these issues are complicated in many cases by the lack of titles to land and property. International observers expressed little hope that payment of claims of compensation for property lost or damaged would be forthcoming. (The Government of Indonesia is itself reportedly demanding compensation for damage to government buildings in East Timor.)

51. Loss of documentation. Although there is no evidence that personal documentation was deliberately and systematically destroyed (indeed many East Timorese are reported to have triumphantly rid themselves of identity cards perceived as Indonesian in an affirmation of the results of the ballot), important pieces of documentation such as titles to land and property, educational and training certificates, and bank statements were lost as a result of the destruction. The loss of this documentation has led to enormous problems in terms of proving employment qualifications and ownership of assets. With respect to travel documents, the UNTAET border

control division has issued East Timorese nationals with temporary travel documentation, which is already recognized by a number of countries. Lack of personal documentation does not prevent applicants from obtaining such a document.

52. Food assistance. The food situation in East Timor is reported to have improved significantly. Large numbers of persons who had returned in the late autumn had been able, with the assistance of seed distribution by the World Food Programme (WFP), to plant crops that are now about to harvest. Consequently, the general distribution of emergency food assistance was about to end in favour of targeting on the basis of vulnerability. While addressing the plight of those most in need, this approach is also expected to serve to reduce feelings of resentment towards those displaced persons perceived to have fared better, and thereby to alleviate tensions among the different groups of displaced persons. At the same time, the fact that the lists of vulnerable persons to receive such assistance are compiled by the CNRT, which it was felt may be influenced by political factors and not objective assessments of need, was cause for some concern among international agencies. Regarding the distribution of food assistance, WFP has obtained from the CNRT leadership a commitment to the WFP general principle that a majority of food assistance for families is to be distributed to women. Though prevailing traditions in East Timor regarding gender roles has meant that at the local level food assistance continues to be distributed predominantly to men, it is significant that no evidence has been found to suggest that food is not being distributed evenly within the family.

53. Health. One of the few intact buildings in Dili is the hospital currently run by ICRC. Though most of the equipment was looted, its structure emerged relatively unscathed. The hospital is staffed by 26 foreign medical workers, seven of whom are doctors, there are 203 beds and an occupancy rate of 90 per cent. It is the only functioning hospital in East Timor. ICRC indicated, however, that it cannot sustain its support of the hospital for much longer and would need to hand over responsibility to another agency or local authority. However, apart from a number of reportedly very skilled midwives, there is little local professional capacity in the health sector. Moreover, while the level of medical care provided is considered to be adequate, ICRC is making a conscious effort to ensure it does not artificially inflate the standards of medical attention while it administers the institution, for fear that such standards could never be maintained in the future. Capacity-building in the health sector is critical.

54. Education. UNICEF reported a very positive response to the recommencing of primary education: at the time of the Representative's visit, he was informed that 70 per cent of primary schools had reopened and 130,000 of 160,000 children of primary-school age were back in the classroom. Over 6,000 teachers are being paid through a joint UNICEF-WFP incentive programme. However, given the significant financial implications, UNICEF has indicated that it would not be able to sustain this support for very long. Moreover, it noted that school supplies, especially books, are in short supply and secondary education is a neglected area. Indeed, on this last point, it was striking to see large numbers of young people lingering about, seemingly with nothing to do. Supporting educational and training opportunities for young people should be a matter of priority, taking advantage of the fact that the technical college in Dili is among the few buildings in Dili that were not destroyed.

55. Economic livelihood and opportunities for income-generation. The impact of the mass physical destruction on the economy of East Timor has been severe. The unemployment rate is

over 80 per cent. Hesitation to return on the part of some refugees still in West Timor stems from these grim economic conditions. At the same time, there are some 30,000 more people in Dili than before, most of whom feel that their economic prospects are greater in the capital. Their presence in Dili, however, has caused some social tension, and certainly puts pressure on community infrastructure and services, especially water and sanitation services. The CNRT Vice-President and Nobel Laureate Jose Ramos Horta expressed deep concern about the social problems created by the desperate economic situation, particularly a rising crime rate and gang violence, hitherto unfamiliar to East Timorese society. He urged the development aid community to assist in addressing these problems and averting a social crisis by not concentrating their programmes solely on the capital but also promoting rural development. Speaking of the deep spiritual attachment of the East Timorese to their land, he said that the support required to facilitate the return of the displaced to their areas of origin was comparatively small: assistance in rebuilding a chapel, a health clinic, a school, and means of public transportation, for instance.

56. As discussions with local leaders and UNTAET officials revealed, there exists significant economic potential in East Timor. Coffee had been its largest export and could soon be again: although the events of last autumn brought production to a standstill, the plantations were largely unaffected by the campaign of destruction. Furthermore, East Timor is reputed to have significant reserves of oil and gas. Eco-tourism has also been touted as a possible source of revenue.

57. Among the programmes seeking to rejuvenate the economy and strengthen local capacity is the Return of Qualified Nationals programme devised by IOM. To date, however, the response to the programme has been weak, perhaps understandably, given the comparatively low wages and difficult living conditions currently in East Timor. Important efforts to rebuild infrastructure and create what are expected to be several thousand employment opportunities in the near future are currently being planned through the World Bank's community empowerment programmes, the USAID Office of Transitional Initiatives (OTI) programme and the Quick Impact Projects (QIPs) of UNTAET and its partner agencies. Microcredit and microenterprise projects are also required. The rapid disbursement of funds supporting these programmes is critical to the urgent commencement of their implementation.

V. CONCLUSIONS AND RECOMMENDATIONS

58. The people of East Timor have suffered unimaginable hardship over the past 25 years, most particularly in the past year. Though the period of intense terror associated with the popular consultation has passed, durable solutions for the hundreds of thousands of persons displaced, both within and outside East Timor, still need to be found. To this end, a number of recommendations are put forth.

59. Physical security of refugees in West Timor. Concerted efforts are required on the part of the Indonesian authorities to restrain the militia activity that continues to threaten the physical security of refugees in West Timor. While recognizing the efforts that have been taken in this regard to date, the international community needs to continue to hold the Indonesian authorities accountable for the safety and welfare of all persons under its territorial jurisdiction.

60. International access to the refugees in West Timor. The call by the Commission on Human Rights upon the Government of Indonesia to ensure immediate access by humanitarian agencies to refugees and to guarantee the security and free movement of international personnel remains of critical relevance in West Timor. Efforts to restrain militia activity against international personnel in the camps and encampments of refugees are essential.

61. Voluntary return or resettlement. Also still relevant is the call by the Commission for the Government of Indonesia to guarantee the voluntary return of all refugees, including those who have been forcibly displaced to camps in West Timor. The safety of refugees who express a desire to return and who leave the camps must be assured. Moreover, at the same time as supporting the return process, the Government of Indonesia and the international community must also reassure refugees that those who choose not to return but to resettle in West Timor or other parts of Indonesia also will be assisted in their voluntary resettlement and integration in Indonesia.

62. Safe return. Return to East Timor must occur in conditions of safety and dignity. To monitor the protection of returnees, the international civilian presence should be increased in areas of return, in particular by providing UNTAET with the necessary resources to put in place human rights monitors in each district and to furnish CIVPOL with the logistical support, especially in terms of transportation, necessary for it to effectively discharge its functions throughout East Timor. UNHCR, for its part, should explore the possibility of increasing the number of protection officers (currently only three for all of East Timor) that it has in place, especially in areas of return. In particular, attention needs to be paid to returns in rural areas far from the capital.

63. Establishment of a judicial system and effective mechanisms of law and order. The urgent establishment in East Timor of a judicial system and effective mechanisms of law and order is essential for creating conditions of safety in areas of return and stemming the current, dangerous trend of people taking justice into their own hands (which, as noted earlier, is also a strong factor impeding the return of certain refugees in West Timor). This is also essential to reducing the growing criminality. CIVPOL, as noted above, needs to be provided with the resources to discharge its responsibilities effectively and the future role of FALINTIL needs to be clarified. Moreover, adequate facilities need to be created for the remand of individuals suspected of having committed serious criminal offences. Reports of arbitrary detention and ill-treatment of persons held by local groups requires a monitoring system and judicial system to look into these cases and bring persons to trial.

64. Investigation and prosecution of violations of human rights and international humanitarian law and crimes against humanity. The culture of impunity for abuses committed against the East Timorese people must at last be brought to an end. As a matter of priority, judicial processes must be established to investigate and prosecute cases of serious violations of human rights and international humanitarian law, as well as crimes against humanity, including forcible transfers of population. The Indonesian Commission of Inquiry into Violations of Human Rights in East Timor has very courageously come forward with a report, which has already led to the resignation of one senior military official implicated in the abuses committed last September. Also important in this regard are the findings of the United Nations Commission of Inquiry and the ongoing investigations of the UNTAET human rights unit and CIVPOL,

which could lead to the prosecution of individual perpetrators, both in East Timor and in Indonesia. The appointment in East Timor of commissions of elders to review cases of less serious criminal offences is one idea raised during the mission which merits further exploration.

65. Support for efforts at reconciliation. At the same time as ensuring that justice is done, there is a need to support East Timor in building the social harmony and common vision upon which its successful development as an independent nation depends. To be sure, the appropriate balance between justice and reconciliation remains a highly debated issue in East Timor. What is certain is that the East Timorese leadership must continue openly and assertively to promote reconciliation and oppose retribution of any kind. In particular, more attention to preventing "popular justice" at the local level is needed. The Church and civil society have an important role to play in this regard, and have begun to sponsor initiatives towards this aim. The participation of all segments of society in such efforts is essential to their success: in a reconciliation exercise observed by the Representative, however, the presence of only one woman among the 16 participants was striking. Greater attention to women's involvement in reconciliation and reconstruction is needed.

66. Reconstruction and restitution of property. Assistance for the reconstruction of shelter and infrastructure in East Timor remains a matter of priority. Despite the efforts undertaken by the international community to date, it is clear that many returnees remain without adequate shelter. Moreover, mechanisms for addressing issues of property restitution and compensation, and especially the problem of illegal occupancy, need to be established and equitable solutions found. UNTAET is encouraged to explore how it could address these issues. Once again, the establishment of a judicial system would help towards this end.

67. Greater involvement of the local community. The involvement of local partners in the design and implementation of initiatives undertaken by the international community in support of the reconstruction and rebuilding of East Timor is essential. A mechanism for regular dialogue and coordination among international agencies and local NGOs needs to be established and other structures set up to involve the East Timorese in the decisions affecting their lives and to balance the very heavy and visible presence of the international community. The weekly meeting of local and international human rights NGOs convened by the UNTAET human rights unit, which the Representative had the opportunity to address, provides an important example in this regard. Moreover, while local NGOs themselves noted that they need to play a more proactive role, they also highlighted the need for strengthened capacity, especially in the area of human rights training and logistical support, in order to be able to do so.

68. Support to women's groups. Special support should be provided to women's groups, in particular to provide psychosocial support to the victims of sexual violence and to address the special needs of women heads of household. In this connection, the recent designation by UNTAET of a gender focal point is a positive step.

69. Increased educational opportunities. Education of children and adolescents is essential to the successful development of East Timor and must be a priority. School supplies are needed to support the primary educational services already in place. Opportunities for secondary education and technical training for adolescents also need to be created.

70. Capacity-building. Support is also urgently required for fostering the building of professional capacity, especially in such critical areas of the public sector as health, education and the judiciary. Projects for job creation, the development of microenterprises and the rebuilding of community infrastructure need to be implemented without delay. Doing so is essential to ensure a more rapid transition from relief to development. Moreover, since the destruction and displacement affected virtually the entire population, there is a need for a comprehensive, community-based approach to development that takes into account the needs of all segments of the population.

71. In conclusion, although several months have passed since the grave violations of human rights and international humanitarian law associated with the popular consultation compelled the Commission to convene a special session on the situation in East Timor, there remain serious concerns today which warrant the continued attention of the international community. Though by no means comprehensive in depicting the complexity of the situation, this report has highlighted a number of concerns standing in the way of durable solutions to the displacement crisis and has set out recommendations for addressing them. The observations and recommendations of the Representative have been shared with the Special Representative of the Secretary-General for East Timor, who noted that they engage his attention and concern as well. The ability of UNTAET to address these concerns, however, will depend on sustained, and indeed strengthened, international support. The donor community has already pledged a significant amount of money, but there is a need to expedite the disbursement of funds so that UNTAET can effectively fulfil the immense responsibilities that it has been assigned. At the same time as underwriting international efforts, there is an immediate need to lend support to the development of civil society, in order to ensure a smooth transition of the administration of East Timor from the United Nations to the people of East Timor. Doing so is essential to ensure the successful development of East Timor as an independent nation and the potential legacy of UNTAET as a model of international involvement.

Notes

[1] The Security Council, in resolution 384/1975 of 22 December 1975, adopted following the armed intervention by Indonesia in East Timor, called upon "all States to respect the territorial integrity of East Timor as well as the inalienable right of its people to self-determination" and called upon "the Government of Indonesia to withdraw without delay all its forces from the territory". The General Assembly, in resolution 3485 (XXX) of 12 December 1975, "strongly deplore[d] the military intervention of the armed forced of Indonesia in Portuguese Timor". In resolution 31/53 of 1 December 1976, and again in resolution 32/34 of 28 November 1977, the General Assembly rejected "the claim that East Timor has been incorporated into Indonesia, inasmuch as the people of the territory have not been able freely to exercise their right to self-determination and independence".

[2] This point is particularly well argued in U.S. Committee for Refugees, East Timor: A Crisis of Displacement (November 1999), pp. 10-12.